

Congress of the United States  
House of Representatives  
Washington, DC 20515

January 30, 2020

Ms. Cheryl Stanton  
Administrator  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Ms. Loren Sweatt  
Principal Deputy Assistant Secretary  
Occupational Safety and Health Administration  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Dear Administrator Stanton and Principal Deputy Assistant Secretary Sweatt:

I am concerned by the reports this month that four workers have been injured at the Imperial Pacific International (IPI) construction site in the Northern Mariana Islands (NMI).<sup>1</sup> This is not the first time. In 2016, an Occupational Safety and Health Administration (OSHA) investigator was informed that the hospital in the Marianas had treated over 80 injuries to construction workers at this site.<sup>2</sup> In March 2017, one worker reportedly fell to his death from scaffolding.<sup>3</sup>

Moreover, the U.S. Department of Labor (DOL) conducted a Fair Labor Standards Act (FLSA) investigation of the IPI construction project between January 2016 and December 2017, uncovering numerous violations related to overtime and minimum wage payments for IPI contractors. IPI agreed, in a consent judgment filed in April of 2019 in the Northern Mariana Islands District Court (CV 19-00007, *Acosta v. IPI*), to settle and resolve all violations, paying impacted workers \$1,580,000 in backwages and an additional \$1,580,000 in liquidated damages.<sup>4</sup> Further, the consent judgement appointed an Independent Monitor for a period of one year to oversee IPI's compliance with the FLSA and the consent judgement.<sup>5</sup> Section 12 of the

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<sup>1</sup> Ferdie De La Torre., BREAKING NEWS: 4 hurt as scaffold at IPI construction site collapses, SAIPAN TRIBUNE (2020), <https://www.saipantribune.com/index.php/breaking-news-4-hurt-as-scaffold-at-ipi-construction-site-collapses/>.

<sup>2</sup> Declaration of Rick Foster, Docket No. 3, Establishment Inspection of: MCC International Saipan Ltd. Co., 16-MC-0041 (CNMI District Court, December 15, 2016), para. 3.

<sup>3</sup> Ferdie De La Torre., Man killed was unauthorized to work, SAIPAN TRIBUNE, (2017), <https://www.saipantribune.com/index.php/man-killed-unauthorized-work/>.

<sup>4</sup> *Acosta v. Imperial Pacific International Holdings, Ltd., Imperial Pacific International (CNMI), LLC*, No. 1:19-cv-00007, 2019, at (D. N. Mar. I. Apr. 11, 2019).

<sup>5</sup> Id.

consent judgement grants the Independent Monitor the authority to enter the worksite without prior notice and “inspect all of the physical facilities and working conditions of the worksite”.<sup>6</sup>

Despite these enforcement actions, serious problems persist. In 2018, 30 Chinese employees working on the project protested that IPI had not paid owed overtime wages.<sup>7</sup> In that same year, 80 H-2B guest workers reportedly were not properly compensated and had their contracts terminated.<sup>8</sup>

In order to better understand what OSHA and the Wage and Hour Division (the Division) of the Department of Labor are doing to prevent further violations of federal safety and labor standards and to hold IPI accountable for their infractions, I request the following information and documents:

### **Occupational Safety and Health Administration**

1. The Northern Mariana Islands fall under the jurisdiction of OSHA’s Region 9. Is Region 9 currently fully staffed and able to enforce safety standards at worksites in the NMI?
2. House Report 116-62 directs OSHA to ensure that there are full-time compliance safety and health officers located in each territory under its jurisdiction. Please provide a report on the plan to carry out this directive.<sup>9</sup>
3. Please provide data on injuries, illnesses or fatalities at the IPI construction site from 2016 through 2020, inclusive.
4. Please provide a report on OSHA’s plans to increase its monitoring and oversight of safety at the IPI construction site. If there are no plans, please provide a rationale for this decision.
5. Rick Foster, a Compliance Safety and Health Officer with OSHA was referred to the IPI construction site and described interactions with IPI contractor MCC International Saipan Ltd’s (MCC) job-site safety officer in a December 2016 statement.<sup>10</sup> On arrival, the job-site safety officer provided a copy of an internal investigation of a fatality that occurred on December 3, 2016.<sup>11</sup> Please describe the actions OSHA is taking to ensure that job-site safety officers working for IPI or an IPI contractor are performing their duties to protect workers and adhere to federal safety standards.

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<sup>6</sup> Id.

<sup>7</sup> Cherrie Anne E. Villahermosa, Construction workers stage protest, MARIANAS VARIETY, (2018), <http://www.mvariety.com/cnmi/cnmi-news/local/107005-construction-workers-stage-protest>

<sup>8</sup> Jon Perez, 80 workers lose jobs, SAIPAN TRIBUNE, (2018), <https://www.saipantribune.com/index.php/80-workers-lose-jobs/>.

<sup>9</sup> H.Rept. 116-62, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2020, REPORT House of Representatives Committee on Appropriations, <https://www.congress.gov/116/crpt/hrpt62/CRPT-116hrpt62.pdf>.

<sup>10</sup> Declaration of Rick Foster, Docket No. 3, Establishment Inspection of: MCC International Saipan Ltd. Co., Case No. 16-MC-0041 (CNMI District Court, December 15, 2016), para. 3, <http://bit.ly/35BX6sp>.

<sup>11</sup> Id.

6. Section 12 of the consent judgement authorizes an Independent Monitor to inspect all physical facilities and working conditions of the worksite.<sup>12</sup> Please provide the number of inspections conducted by the Independent Monitor at the IPI construction site since the consent judgement.
7. Section 13(f) of the consent judgement allows the Independent Monitor's duties to be extended by Court order if petitioned by the Secretary, Independent Monitor, or any employee.<sup>13</sup> Given continuing safety violations, will OSHA recommend the Secretary petition the Court to order additional monitoring and that the additional monitoring include safety inspections by qualified, independent professionals?

### **Wage and Hour Division**

As part of the above referenced 2019 consent judgement, IPI agreed to comply with the minimum wage and overtime provisions of the FLSA, make changes to payroll and record keeping processes, conduct FLSA training, and cooperate with an Independent Monitor.<sup>14</sup>

1. Section 5(a) orders IPI to pay owed back wages and liquidated damages in installments to the Secretary beginning December 1, 2019.<sup>15</sup> Has IPI made the \$1,020,000 installment payment as ordered and what are the Division's next steps are if payment has not been received?
2. Section 6 of the consent judgement orders IPI to identify employees who are owed back wages that were not presently identified at the time of the judgement.<sup>16</sup> and Section 7 orders the Secretary to distribute back wages to the identified employees less payroll and withholding taxes.<sup>17</sup> Has IPI identified all employees that were owed back wages and have back wages been paid?
  - a. Is the Division making efforts to identify impact workers not enumerated the consent judgement, but are owed back wages?
3. Section 8(c) orders all paystubs to show hourly rates, all hours worked in a week(s), premium pay which may include overtime calculations, and all deductions.<sup>18</sup> Section 8(d) orders all time and payroll records to be maintained for no less than 3 years and available to the division upon request.<sup>19</sup> Has the Division requested any payroll records from IPI and were there any violations of Section 8(c)?
4. Under section 8(j), the Division may conduct unannounced visits to the worksite to inspect payroll records and interview employees.<sup>20</sup> Has the Division performed any unannounced visits since the consent judgement and what were the results?

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<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.


<sup>19</sup> Id.

<sup>20</sup> Id.

5. Section 10 of the consent judgement requires IPI to hire an independent third-party to conduct FLSA supervisor training on at least an annual basis.<sup>21</sup> IPI must document these trainings, maintain records for at least three years, and produce these documents to the Division upon request.<sup>22</sup> Has the Division sought documentation related to IPI's required training?
6. Section 11 of consent judgment requires all current and future IPI contractors to attend an education outreach seminar conducted by the Division and any agencies it invites, such as OSHA, Casino Commission, or CNMI Department of Labor.<sup>23</sup>
  - a. Please describe the content of these seminars and how frequently they may occur.
  - b. How many seminars have occurred since the consent judgement?
  - c. Please provide a list of agencies invited and agencies that participated in any seminars that may have occurred.
  - d. If OSHA has not participated in any that may have occurred seminars, please explain why.
7. Section 13(c) stipulates conditions under which the Independent Monitor must report violations to the Secretary.<sup>24</sup> Has the Independent Monitor reported any violations?
8. Section 13(d) permits the Division to provide confidential information obtained during the Division's 2016-2017 FLSA investigation to the independent monitor without waiving any privileges protecting said information.<sup>25</sup> Has the Division shared information from its investigations with the Independent Monitor?
9. Section 13(e) requires quarterly reports on the results of inspections, status of compliance, and time spent to the Secretary.<sup>26</sup> Please provide all reports to date.

Please provide the requested information and documents as soon as possible, but no later than February 13, 2020. If you have any questions, please contact Christopher DeVore at Christopher.DeVore@mail.house.gov. Thank you for your attention to this matter, and I look forward to your response.

Sincerely,



GREGORIO KILILI CAMACHO SABLAN  
Member of Congress

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<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.